IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2737 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHRATHBHAI GORDHANDAS JOSHI

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 2737 of 1993

MR DN PANDYA for Petitioner No. 1

MR BIPIN P JASANI for Petitioner No. 1

MR DA BAMBHANIA for Respondent No. 1

MS DS PANDIT A.G.P. for Respondent No. 1

MS SALONI S GUPTA for Respondent No. 2-3

MR HS MUNSHAW for Respondent No. 2

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 23/08/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India to seek relief that the action of respondents withholding the difference of salary since 1st January, 1973 be quashed and set aside and to declare that the petitioner is entitled to get the pay-scale of Rs.195-10-245 since 3rd February, 1965 together with consequential increase in the pay-scale which ultimately reached Rs.2200-75-2800-EB-100-4000 on 1st January, 1996 i.e. the date of retirement of the petitioner. He has also prayed for certain incidental reliefs which have been adequately narrated in the prayer clause of the petition.

2. Certain relevant facts are required to be narrated and they are as under :-

2.1. The petitioner was initially appointed on the post of Social Worker in the pay scale of Rs.195-10-245 with effect from 3rd February, 1965. His appointment was made by a common order of appointment of 67 persons by the Director of Health & Medical Services (Health Section) dated 9th January, 1995. In the said order, petitioner's name appears at Sr. no.30. He was posted at Government Dispensary at Unaoo of Mehsana District. The petitioner was thereafter transferred as Extension Educator from Social Worker at Adalaj by order dated 7th June, 1968 by the Director of Health & Medical Services. Later on pay-scale of District Extension Educator ("D.E.E." for short) came to be revised from Rs.195-10-245 to Rs.200-430 in accordance with the recommendations of the Pay Commission which is popularly known as Sarela Pay Commission. The State Government issued Resolution dated 21st January, 1971 bringing about the change and increase in the pay-scale of D.E.E. Since the petitioner was appointed in the pay-scale of Rs.195-245, according to said Resolution, he was placed in the pay-scale of Rs.200-430. Another change was effected in the pay-scale because of the revision recommended by the Desai Commission i.e. Pay Commission appointed for revision of pay-scales which was headed by the then sitting Judge of this Court Hon'ble Mr.Justice D.A. Desai. With the recommendations of Desai Pay Commission pay-scale of Rs.200-430 was revised and in its place pay-scale of Rs.550-900 was introduced vide Government Resolution dated 20th October, 1978. According to the petitioner, he was placed in the pay-scale of Rs.550-900 with effect from 1st January, 1973. It is the say of the petitioner that such placement was even approved by the audit department of

the State. Sometime in the year 1981 and the State Government took decision to bifurcate the pay-scales into two. So far the petitioner's department is concerned, the person holding M.S.W. degree qualification or postgraduate degree qualification with the subject of Sociology, higher pay-scale was recommended whereas the person holding degree of graduate was to be placed in lower pay-scale. This bifurcation was effected right from the beginning i.e. for M.S.W. or postgraduates pay-scale of Rs.195-245 was prescribed and for those who possess a degree of graduation only were placed in the lower pay-scale of Rs.145-285. It is the say of the petitioner that the bifurcation was not to adversely affect the persons who were appointed as Social Worker or D.E.E. on or before 15th July, 1966. Since the petitioner was appointed in the service much prior to that date, he was continued in the pay-scale of Rs.195-245. By virtue of this pay-scale the petitioner received incidental increases from time to time. He was with effect from 1st January, 1973 placed in the pay-scale of Rs.425-15-500-E.B.-15-700. Again on 1st January, 1974 the petitioner received increment and the pay-scale which he was entitled to receive was Rs.550-25-700-E.B.-25-750-30-900. According to the petitioner all these entries with regard to different pay-scales received by him have been duly certified in his service book. His Contention is that he was continued in the further higher pay-scale on the basis of his original pay-scale of Rs.195-245. Ultimately, with effect from 1st January, 1986 he reached the pay-scale of Rs.1640-60-2600-E.B.-75-2900. The petitioner's say is that at no point of time during all these years any objection with regard to the pay-scale granted to him was taken either by the audit department or the respondents. It was only on 17th October, 1990 he was served with a showcause notice intimating him that his pay-scale was required to be revised as he was wrongly placed in the higher pay-scale. In the said showcause notice it has been stated that the petitioner was given appointment in the pay-scale of Rs.195-10-245 as Social Worker with effect from 3rd February, 1965. However, considering the fact that the petitioner was merely a graduate he was required to be placed in the pay-scale of Rs.145-8-185. It is further stated in the said notice that in the year 1987-88 the audit department had raised objection with regard to the grant of higher pay-scale to the petitioner and on that basis the petitioner's pay-scale was required to be corrected and he was called upon show cause as to why, the excess amount that had been made to the petitioner during all these years i.e. right from February, 1965 till January, 1990 by virtue of wrong

placement in higher scale should not be recovered from the petitioner. According to the said notice, the petitioner was required to be placed in the pay-scale of Rs.1400-2300 with effect from 1st January, 1986.

2.2. In reply to the said showcause notice the petitioner wrote a letter which is of 29th October, 1989. In the said reply, the petitioner has stated that he has been right from the beginning placed in the pay-scale of Rs.195-245 and from time to time his pay-scale was fixed in accordance with his original pay-scale. Therefore, he was entitled to receive his salary of higher pay-scale. He has made a grievance in the reply stating that inspite of the fact that his salary was fixed in accordance with the scales laid down, he was not paid his full salary. He has further stated that it was almost all throughout he is placed in the higher pay-scale and there was no question of respondents committing a mistake. He has further stated that if any error was committed in fixing the pay-scale of the petitioner it would have come to the notice of all concerned and especially the audit department and, therefore, it can safely be presumed that the petitioner was placed in the said pay-scale initially and there was no error committed by any person. The petitioner has made a further grievance that since 1st January, 1989 he has been made stagnant in the pay-scale of Rs.2900, though with the incidental increase it ought to have reached the pay-scale of Rs.2200-4000. At the time of his reaching the age of superannuation, the petitioner agitates that the respondents have deliberately not allowed him to move further than Rs.2900 though many others have been allowed to do so.

3. As against that the say of the respondent is that even at the time of appointment of the petitioner in the service of the respondent there were two pay-scales but through mistake the petitioner was placed in the higher pay-scale of Rs.190-240. It is further averred by the respondent that the error was discovered by the audit department sometime in the year 1987-88 and it had duly intimated the respondent about the mistake in fixation of pay-scale of the petitioner. The respondent therefore was constrained to issue notice bringing to the notice of the petitioner that he was merely a graduate and he was required to be placed in the pay-scale meant for graduates and not in the higher pay-scale which was exclusively meant for the degree holder of M.S.W. and postgraduate in the subject of Sociology. It is the case of respondents that since mistake was committed by them the same was required to be amended and, therefore, the aforesaid showcause notice dated 17th October, 1990 was

required to be given. According to the respondents the petitioner cannot be allowed to take the benefit of the mistake committed by the respondents. It is the say of the respondents that whatever the benefits the petitioner has unduly received uptill now, cannot be continued any longer after it has come to the notice of the authorities concerned. The respondents' say is that there is no such principle of law that once the mistake is committed it should be allowed to continue, otherwise the same may cause discrimination and injustice to the others.

3.1. Mr.D.N. Pandya learned counsel for the petitioner has argued that in this case the petitioner has been right from the beginning placed in the pay-scale of Rs.195-10-245 and that there were no two pay-scales existing then. His contention is that since the petitioner has been allowed to continue in the higher pay-scale even after the bifurcation of two pay-scales in the year 1981 on the basis of educational qualification, the petitioner was allowed to continue in the higher pay-scale, as the decision taken by the Government of bifurcating the pay-scales was not to affect the persons who were appointed prior to 1st January, 1966. Contention of Mr.Pandya is that there was no valid reason for the respondent to withhold the salary and to make him stagnant in the same pay-scale, since the year 1989. He has, therefore, submitted that the claim of the petitioner is genuine and the respondents are required to be restrained from altering his pay-scale and place him in a lower pay-scale.

4. As against that Mr.Munshaw learned counsel for the respondent has submitted that it is not true that at the time when the petitioner was appointed in the employment of the respondent there was only one pay-scale i.e. 195-10-245. His contention is that even at that time there were two pay-scales available and looking to the educational qualification of the petitioner he was required to be placed in the lower pay-scale, but instead he has been placed in the higher pay-scale meant for postgraduate degree holder. According to him those who possessed M.S.W. degree or postgraduate degree, they were required to be placed in the higher pay-scale whereas the persons holding the graduate degree were required to be placed in the lower pay-scale. According to Mr.Munshaw if any mistake was committed by the respondents the same should not be allowed to continue for all time to come and the petitioner who is not entitled in the higher pay-scale should not receive the benefit thereof. He has further contended that considering the fact that the petitioner ought to have

been placed in lower pay-scale, the amount paid in excess to his legitimate salary was required to be recovered. Considering the circumstances on the record the respondent may not insist for recovery of the amount but at the same time no further benefit should be allowed to be taken by the petitioner for the error committed by the department. He has lastly submitted that this petition does not have any merit and it requires to be dismissed.

4. Having carefully gone through the record of the petition it clearly appears that the petitioner at the time he was appointed together with several other coemployee by a common appointment order was fixed in the pay-scale of Rs.195-245. He continued in the same pay-scale and received intermittent incidental increase which have been referred to above in detail. All this was done on the basis of the higher pay-scale. Surprisingly enough nobody had then noticed the petitioner's placement in higher pay-scale. This position continued for 23 to 24 long years. For the first time in the year 1987-88 the so-called mistake was detected by the audit department and the same was brought to the notice of the respondents. Considering this fact one would except the respondents act immediately and take appropriate steps at the earliest to warn the petitioner that he was receiving undeserved benefit in the higher pay-scale. However, nothing was done for a period well over two years and for the first time in the month of October, 1990 the aforesaid notice came to be issued by the respondent. By October, 1990 the petitioner had put in service of 25 years and 7 months. He was to retire in the year 1996. Thus, almost last phase of his tenure in the employment of the respondent was being traversed by the petitioner. At that time, the respondent all of a sudden became vigilant and resorted to issuing showcause notice and not only that but they even called upon the petitioner to showcause as to why excess amount should not be recovered from him. One really fails to understand that if right from the beginning there were two pay-scales existing what was the necessity of placing the petitioner in the higher pay-scale. Assuming it was by mistake then why the mistake was not detected for a period well over 23 years. It is a matter of common knowledge that so far the financial aspect of the Government administration is concerned it is always under the scrutiny of the audit department and the said department is supposed to discover the mistakes or irregularities that have been committed in the matter of expenditure incurred by the Government departments. From the very fact that nothing was done for 23 long years, it can safely be presumed that the petitioner's placement in

the higher pay-scale was done with full consciousness and for that reason alone the respondents now after 25 years cannot be permitted to say that they had committed mistake at the time of appointment. If the position that existed for 25 years is altered to the detriment of the petitioner it will result into grave injustice.

5. In a case having similar facts and circumstances, i.e. in the case of G.N. Solanki v. D.D.O. in Special Civil Application no.9915/1996 (judgment dated 5th August, 2002), I have taken a view that the respondent after such a long period cannot be allowed to change the pay-scale of the petitioner to his disadvantage. In that case, delay was sought to be explained by the respondent of that petition on the ground that because of the pending litigation challenging the legality of bifurcation of pay-scale it did not take steps against the petitioner. However, that explanation has not been accepted by me and the aforesaid view has been taken. Again this has been done by placing reliance on the decision rendered in the case of N.H. Pandya v. District Development Officer, Gandhinagar in Special Civil Application no.4410/1992 delivered by the learned Single Judge of this Court (Coram : M.R. Calla, J.). In that case also this Court held that at such fag end of the service action of the respondent to alter pay-scale to the disadvantage of the petitioner should be discouraged. In both the aforesaid cases, the impugned decisions have been quashed and set aside. Mr.Munshaw has tried to distinguish the case of Mr.N.H. Pandya v. D.D.O. from this case and has submitted that in that case the petitioner had almost reached the age of superannuation and it was at the time when he had requested the respondent to prepare pension papers, the respondent had served him with the order regarding his placement in the lower pay-scale on the ground that through mistake he was placed in the higher pay-scale. Here, according to Mr.Munshaw, this has been done well in time i.e. almost six years prior to the petitioner's reaching the age of superannuation. This argument of Mr.Munshaw does not appeal to me because in this case, the petitioner has put in around 25 years' service and at the end of such a long period, if such showcause notice is given and the decision is intended to be taken for reducing his pay-scale, in my opinion the same cannot be allowed to be done as the case of the petitioner still stand on the same footing as the case of the petitioners of the above referred two petitions. Considering the fact that his appointment was made in the month of March, 1965 and this action was sought to be taken in the year 1990, it can certainly be said that it is at much belated

stage. In that view of the matter, this petition deserves to be allowed. The showcause notice at annexure-P dated 17th October, 1990 is quashed and set-aside. Any decision taken pursuant to the said showcause notice also automatically stand quashed and set aside. The respondents are directed to release all the retiral benefits of the petitioner on the basis of higher pay-scale and also release whatever salary that has been withheld on account of stagnation at Rs.2900 from the year 1989 till the age of superannuation on or before 31st December, 2002. The respondents are directed to pay interest at the rate of 12% on the difference of salary that may be worked out between the stagnated amount and the actual amount payable to the petitioner. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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